

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES OF AMERICA,)

Plaintiff,)

vs)

TOBECHI ENYINNAYA ONWUHARA,)

Defendant)

Case CR03-011C

ORIGINAL

PLEA

on February 24, 2003, before the Honorable Ricardo S Martinez,
United States District Judge, at the United States Courthouse,
Seattle, Washington



CR 03-00011 #00000034

Appearances of Counsel

On Behalf of Plaintiff

LAWRENCE LINCOLN

Assistant U.S Attorney

On Behalf of Defendant

MICHAEL NANCE

Attorney at Law

Sue Palmerton

Official Court Reporter

(206) 553-1899

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE
4

5 UNITED STATES OF AMERICA,)
6 Plaintiff,)
7 vs) Case CR03-011C
8 TOBECHI ENYINNAYA ONWUHARA,)
9 Defendant)
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12 on February 24, 2003, before the Honorable Ricardo S. Martinez,
13 United States District Judge, at the United States Courthouse,
14 Seattle, Washington.
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17 Appearances of Counsel

18 On Behalf of Plaintiff LAWRENCE LINCOLN
19 Assistant U.S Attorney
20 On Behalf of Defendant. MICHAEL NANCE
21 Attorney at Law
22

23 Sue Palmerton
24 Official Court Reporter
25 (206) 553-1899

1 Seattle, Washington, Monday, February 24, 2003, 3 50 p m

2 THE COURT Thank you Please be seated All right,
3 gentlemen, thank you for your patience This is United States
4 versus Onwuhara, criminal cause number 03-11 assigned to Judge
5 Coughenour Lawrence Lincoln present on behalf of the
6 government and Michael Nance present on behalf of the defendant

7 Mr Onwuhara, good afternoon

8 THE DEFENDANT Good afternoon.

9 THE COURT Sir, I have had a chance to review the
10 documents that the attorneys have put together in this matter
11 I have also had a chance to review the legal file on this
12 Those documents indicate that you are here this afternoon
13 intending to enter a plea of guilty to a felony criminal charge.
14 Is that your understanding?

15 THE DEFENDANT That's correct

16 THE COURT I assume you've discussed this very
17 carefully with Mr Nance?

18 THE DEFENDANT Yes, I have.

19 THE COURT I assume that you are here acting on his
20 advice to you, his recommendation?

21 THE DEFENDANT Yes, I am

22 THE COURT Do you understand that is exactly what his
23 job is, to give you advice, to make a recommendation? However,
24 the consequences of pleading guilty to any charge fall on you,
25 not on him Therefore, you're the only one that can decide this

1 today Is that understood?

2 THE DEFENDANT Yes, I understand that

3 THE COURT Is this your choice?

4 THE DEFENDANT Yes

5 THE COURT Let me tell you how we will proceed Let
6 me tell you what my role is during this hearing. First of all,
7 we will swear you under oath. Then I will ask you a series of
8 questions about your understanding about the charges against
9 you, the rights that you give up by pleading guilty and the
10 potential consequences of the entry of this plea

11 We'll go through the documents that are here, the
12 superseding information, the plea agreement, the waiver of
13 indictment, the consent form, all of that

14 Throughout that question and answer session, if you have any
15 questions about anything that I'm reviewing or discussing, don't
16 hesitate to ask those questions All right?

17 THE DEFENDANT All right

18 THE COURT I need to advise you that you are sworn,
19 you will be sworn to tell the truth So, if you were to
20 deliberately give any false responses or statements, that could
21 potentially be the basis for another charge in the future of
22 either making a false statement or perhaps even a charge of
23 perjury Is that understood?

24 THE DEFENDANT Yes

25 THE COURT All right. If you wish to proceed with the

1 plea, let me have you stand, raise your right hand Our clerk
2 will administer the oath

3 (The defendant was sworn.)

4 THE COURT Thank you, sir All right Let me ask a
5 few questions about you, your background before we get to all
6 the documents here We have your name on the caption as Tobechi
7 Enyinnaya Onwuhara. I hope I didn't mispronounce it too badly
8 But is that your true and correct name?

9 THE DEFENDANT Yes.

10 THE COURT What is your date of birth, sir?

11 THE DEFENDANT July 24, 1979

12 THE COURT How much formal education have you
13 completed in your lifetime?

14 THE DEFENDANT I have some college credit

15 THE COURT I am assuming you are able to read and
16 write in English?

17 THE DEFENDANT Yes

18 THE COURT I have a consent form, sir -- well, first
19 of all, there is a superseding information, a new charge that
20 supersedes what was in the old file I have a consent form, I
21 have a waiver of indictment and then a lengthy plea agreement
22 Have you reviewed those documents for yourself?

23 THE DEFENDANT. I have reviewed the plea agreement.

24 THE COURT And have you gone over them with your
25 counsel?

1 THE DEFENDANT I've gone over them

2 THE COURT Are you satisfied you understand what those
3 documents contain, what they say?

4 THE DEFENDANT Yes

5 THE COURT Have you ever been treated for any type of
6 mental illness or any addiction to narcotic drugs?

7 THE DEFENDANT No, I've never been treated

8 THE COURT. Within the last 24 to 48 hours, have you
9 ingested or taken any kind of drug, any alcohol, any
10 prescription medication, anything that might affect your ability
11 to understand what we are discussing here today and the serious
12 implications of all of this?

13 THE DEFENDANT No, Your Honor.

14 THE COURT All right All right, let met get to the
15 documents, then I indicated that the government has filed a
16 superseding information That is the charging document charging
17 a single offense here of illegal transactions and attempted
18 transactions with credit card access devices

19 Do you understand that this is now the charge that we are
20 discussing here? This is the charge that you are asking the
21 Court to accept a plea of guilty to

22 THE DEFENDANT Yes, I understand

23 THE COURT I have a consent form This consent form
24 advises you that you have the absolute right if you wish to have
25 this hearing that we are doing right now before the assigned

1 district judge, in this case Judge Coughenour. However, it is
2 one of your rights. You can consent and agree to stay here and
3 do the hearing in front of me

4 The consent form concludes by advising you that ultimately
5 it will be the assigned district judge who decides whether to
6 accept or reject the plea here and any plea agreement Assuming
7 the plea is accepted, he will be the one that imposes sentence
8 Do you understand that?

9 THE DEFENDANT: Yes, I understand

10 THE COURT I have a waiver of indictment This
11 document advises you that you have an absolute right to be
12 prosecuted only after an indictment has been returned by a grand
13 jury The government would bear the burden of trying to
14 convince those members of the grand jury that there is enough
15 probable cause to believe that you committed some sort of
16 federal offense If they can do it, then the grand jury returns
17 an indictment. If they can't, they wouldn't return a true bill,
18 in which case no prosecution

19 However, it is one of your rights again, you can consent and
20 agree to waive that prosecution by indictment. You can say no,
21 that's fine, I agree to be prosecuted by information, which is
22 that first document we reviewed

23 This waiver of indictment has been signed by Mr Lincoln,
24 Mr. Nance There is a signature in black ink above your printed
25 name Did you sign and authorize this waiver of indictment?

1 THE DEFENDANT That is my signature

2 THE COURT Do you have any questions about that?

3 THE DEFENDANT No. I consent

4 THE COURT Counsel, the Court has signed and approved
5 the waiver of indictment All right, Mr Onwuhara, let's go
6 over the plea agreement Now, do you have a copy in front of
7 you?

8 MR NANCE. Yes

9 THE COURT Now, I know that you've told me that you've
10 reviewed it for yourself You've gone over it with counsel.
11 That you understood it I have no doubt that you do But in
12 order to do my job and just so that we are able to answer any
13 questions you might have at this critical stage, I want to go
14 over it carefully with you All right?

15 Look at page 1, paragraph 1 talks about the charge It says
16 there that you, after having been advised of your right to have
17 this matter tried before a jury, you agree to give up that
18 right, enter a plea of guilty to the superseding information
19 That charges the offense of illegal transactions and attempted
20 transactions with credit card access devices in violation of
21 Title 18, it sets out the appropriate sections there of the
22 United States Code

23 Do you understand that is the charge you are asking to plead
24 guilty to?

25 THE DEFENDANT Yes.

1 THE COURT It concludes paragraph 1 by indicating that
2 by entering the plea of guilty, you would be waiving or giving
3 up any and all objections to the form of the charging document
4 and the venue Is that your agreement, sir?

5 THE DEFENDANT Yes

6 THE COURT. Turn to paragraph 2, page 2 because that
7 sets out the elements of the offense Now, the elements of any
8 criminal charge are those things that the government would have
9 to prove beyond any reasonable doubt, usually to the jury as the
10 trier of fact before they could get a conviction for this
11 charge

12 Here they would have to prove the following four elements
13 One, that you knowingly effected transactions and attempted to
14 effect transactions with access devices issued to other people
15 Two, that you obtained and attempted to obtain through such
16 transactions during a one-year period between in or about
17 December 2001 and in or about December 2002, a total of at least
18 \$1,000 in payments and/or other things of value Three, you
19 acted with the intent to defraud And four, your conduct in
20 some way affected interstate or foreign commerce.

21 Do you understand the elements of this offense?

22 THE DEFENDANT Yes

23 THE COURT. Paragraph 3, sir, sets out the maximum
24 statutory penalties for this offense This is the most the
25 court can impose at sentencing Now, obviously, Judge

1 Coughenour will have the ability to impose something less than
2 this But the most that can be imposed is imprisonment of up to
3 15 years, a fine of a quarter million dollars, a period of
4 supervision following release from custody of up to five years.
5 And there is a mandatory \$100 penalty assessment that should be
6 paid at or before the time of sentencing

7 Do you understand those maximum statutory penalties

8 THE DEFENDANT Yes

9 THE COURT The paragraph goes on to indicate that you
10 agree that whatever monetary penalties may be imposed at
11 sentence would be due and payable immediately Furthermore,
12 you're agreeing to submit a completed debtor financial statement
13 form as requested by the U.S Attorney's office.

14 And finally, it says that you understand that if supervised
15 release is imposed here -- remember the court has the authority
16 to impose up to five years If that is imposed, there would be
17 certain restrictions and requirements set out If you were to
18 violate any of those in the future, then you could be returned
19 to prison for all or part of the term of supervised release that
20 was originally imposed And that could technically result in
21 your serving a total term of imprisonment longer than the
22 statutory maximum we reviewed above Do you understand?

23 THE DEFENDANT Yes

24 THE COURT Paragraph 4, sir, sets out the rights that
25 you give up by pleading guilty Let me go over those with you

1 When you ask the Court to accept your plea of guilty, you give
2 up your right to plead not guilty, to persist in that not guilty
3 plea

4 The right to a speedy and public trial before a jury of
5 peers The right to the effective assistance of counsel,
6 including if you could not afford counsel, the right to have the
7 Court appoint one for you at taxpayer expense

8 The right to be presumed innocent until guilt has been
9 established at trial beyond any reasonable doubt The right to
10 confront and cross-examine witnesses called against you The
11 right to compel and subpoena witnesses to appear and testify on
12 your behalf

13 The right to testify yourself at that trial or if you
14 wanted, you can choose to remain silent and if you did, the
15 silence could not be used against you And finally, you give
16 up the right to appeal any finding of guilt or any pretrial
17 rulings made by the court

18 Do you understand you give up each of those specific rights
19 by pleading guilty?

20 THE DEFENDANT Yes

21 THE COURT Paragraph 5 indicates that the United
22 States Sentencing Guidelines set out by the United States
23 Sentencing Commission apply to this case It goes on to tell
24 you it will be the sentencing court who determines your specific
25 guideline range and that occurs at sentencing

1 Remember now, I told you moments ago the court can impose
2 any sentence authorized by law up to the maximum And certainly
3 whatever sentence is imposed could be different from or depart
4 from whatever the written guideline range calls for

5 Remember that court is not bound or restricted by any
6 recommendation regarding what sentence should be imposed or how
7 the range is calculated or estimated that may be offered by you,
8 by the government or U S Probation

9 And finally, you will not be allowed to withdraw from the
10 plea of guilty solely because of the sentence imposed by the
11 court.

12 Do you understand?

13 THE DEFENDANT Yes

14 THE COURT In this case, has anyone either promised or
15 guaranteed to you what exact sentence you will receive?

16 THE DEFENDANT No

17 THE COURT Paragraph 7 talks about restitution That
18 is a monetary amount that can be imposed at sentence. It's
19 different from a penalty assessment or a fine It's designed to
20 compensate the victim or victims for the -- any losses suffered
21 as a result of the criminal conduct

22 It says in that paragraph that you agree to make full
23 restitution in an amount to be determined with credit, of
24 course, for any amounts already paid at the time of the
25 sentencing

1 And again, the full amount would be due and payable
2 immediately, but of course could be paid in accordance with a
3 schedule of payments as set out by U S. probation and as ordered
4 by the court Do you understand?

5 THE DEFENDANT Yes

6 THE COURT. Paragraph 8 is a statement of facts It
7 says here that you and the government agree that these facts are
8 true and correct and support your plea of guilty And also,
9 they are used for purposes of calculating the base offense level
10 under the guidelines.

11 Have you gone over these facts carefully?

12 THE DEFENDANT. Yes

13 THE COURT. Do you agree they're true and correct?

14 THE DEFENDANT Yes

15 THE COURT All right Mr Onwuhara, I'm not going to
16 review each and every line there with you. However, at the end
17 of my questions, I'm going to ask Mr Lincoln just to briefly
18 summarize what facts the government would be ready to prove
19 assuming they had to take this matter to trial

20 Let me have you now turn to the next page, page 5 and look
21 at paragraph 9 Because as part of this plea agreement, in that
22 paragraph the U S Attorney's office for this district is
23 agreeing to move to dismiss the counts in the indictment at the
24 time of sentencing, as well as agreeing not to prosecute you for
25 any other additional offenses known to them as of the time of

1 this agreement that are based upon evidence in their possession
2 or that arise out of the conduct giving rise to this
3 investigation

4 You must recognize, however, that in this regard the
5 government has agreed not to prosecute each and every one of the
6 criminal charges they believe the evidence establishes were
7 committed by you and that is because of the promises you're
8 making You must understand, however, that for purposes of
9 preparation of any presentence reports, the U S Attorney's
10 office will provide U S. Probation with evidence of all relevant
11 conduct they believe was committed by you.

12 You are agreeing and acknowledging that the charges to be
13 dismissed at sentencing are based on facts and will not provide
14 you with a basis for any future claims as a prevailing party
15 under the Hyde Amendment. Do you understand, sir?

16 THE DEFENDANT. Yes

17 THE COURT Paragraph 10 says that if you have accepted
18 responsibility for this offense, and the U S Probation
19 recommends to the court you receive a downward adjustment to the
20 guidelines because of that acceptance of responsibility, the
21 government also agrees to recommend an appropriate downward
22 adjustment Is that your understanding?

23 THE DEFENDANT Yes

24 THE COURT Paragraph 11 deals with the voluntariness
25 of this plea and it kind of brings me back to where we began our

1 comments earlier today during this hearing about your having
2 made this choice, not anybody else's choice Not Mr Nance's,
3 obviously not Mr. Lincoln's, not myself All right

4 Let me ask you the question this way In this case, has
5 anyone threatened you in any way or made promises to you other
6 than the ones contained in this plea agreement in order to get
7 you to change your plea from not guilty to one of guilty?

8 THE DEFENDANT Nobody has

9 THE COURT Are you doing this, then, of your own free
10 will?

11 THE DEFENDANT Yes

12 THE COURT Paragraph 12, sir, talks about the statute
13 of limitations. It says in the event this agreement is not
14 accepted by the court for whatever reason or in the future you
15 breach or violate any of the terms here, then that formal time
16 period the government has in which they must bring charges for
17 any specific criminal activity is deemed to have been tolled or
18 frozen from the date of the plea agreement to either 30 days
19 following the date of nonacceptance of the agreement by the
20 court or 30 days following the date on which a breach of the
21 agreement by you is discovered by the U S Attorney's office.
22 Do you understand?

23 THE DEFENDANT Yes

24 THE COURT Paragraph 13 says you also understand the
25 terms of this agreement apply only to conduct that has already

1 occurred In other words, if after the date of this agreement,
2 you should happen to engage in any conduct that would warrant an
3 increase in your adjusted offense level or justify an upward
4 departure under the guidelines -- and examples of that could
5 include, but certainly are not limited to, obstructing justice
6 in some way, failing to appear for court proceedings in the
7 future, other criminal conduct or activity while awaiting
8 sentencing or the making or giving of false statements to law
9 enforcement agents, to probation officers or the court -- then
10 at that point, the government would be free to ask for a
11 sentencing enhancement or seek an upward departure based on that
12 conduct Do you understand?

13 THE DEFENDANT Yes, I do

14 THE COURT The final paragraph, 14, says this is the
15 complete agreement of the parties and this agreement only binds
16 the U S. Attorney's office for the Western District of
17 Washington It does not bind any other U.S. Attorney's office,
18 any other office or agency of the government or any other state
19 or local prosecutor, except that the parties herein expressly
20 acknowledge that prosecutors from Denton County, Tarrant County
21 and Dallas County, Texas, have all agreed to dismiss charges
22 relating to credit card abuse and use of false identifications
23 currently pending against you in those counties if the facts of
24 the charges pending in those counties are considered in the
25 sentencing in the instant case

1 And to that effect, copies of letters setting forth
2 agreements from Denton, Dallas and Tarrant Counties are attached
3 and made part of this plea agreement Is that your
4 understanding?

5 THE DEFENDANT Yes.

6 THE COURT Mr Onwuhara, let me have you listen while
7 Mr Lincoln just briefly summarizes what facts they would be
8 ready to prove assuming they had to take this matter to trial
9 Counsel.

10 MR LINCOLN Thank you, Your Honor. If this matter
11 were to go to trial, the government would prove beyond a
12 reasonable doubt that beginning in December of 2001 and
13 continuing until December 2002, within the Western District of
14 Washington, additionally within the District of Oregon, within
15 the Northern District of Texas and within the Eastern District
16 of Texas, specifically Denton County, Tarrant County and Dallas
17 County, the defendant executed a scheme with the intent to
18 defraud by effecting various transactions and attempting to
19 effect various transactions using one or more credit card access
20 devices as defined in Title 18, United States Code, Section
21 1029(e)(1), which access devices in this case had been issued to
22 various persons under the names of Robert Charles Palmer, James
23 Alex Weaver, David Smith, Paul Brophy, Riyad Hossainy, John D
24 Smith, and Keith G Olson And that he did this for the purpose
25 of receiving payments and other things of value during that one-

1 year period in an amount totaling approximately \$86,447 And
2 that these transactions and attempted transactions affected
3 interstate commerce

4 Specifically the evidence would show that Mr Onwuhara
5 obtained certain false -- counterfeit, excuse me, Texas driver's
6 licenses in the names that I've just referred to And also
7 obtained unauthorized credit cards in those names as well He
8 then went out and effected various transactions at primarily
9 banks and businesses

10 At banks, he went out and attempted to obtain and obtained
11 certain cash advances At businesses, he attempted to obtain
12 and obtained certain goods and services. These transactions did
13 affect interstate commerce because the government would be in a
14 position to prove that these cred cards traveled in interstate
15 commerce, and the records of the transactions themselves
16 transmitted in -- were transmitted in interstate commerce

17 And this is all in violation of Title 18, United States
18 Code, Sections 1029(a)(5) and 1029(b)(1).

19 THE COURT Thank you very much, counsel Mr
20 Onwuhara, he summarized what is contained in that paragraph Do
21 you agree that those facts are true and correct?

22 THE DEFENDANT Yes

23 THE COURT Sir, are you a citizen of the United
24 States?

25 THE DEFENDANT Yes

1 THE COURT You understand that by pleading guilty to a
2 felony criminal charge, you lose valuable civil rights? You will
3 lose the right to vote. You lose the right to sit on a jury
4 You lose the right to run for elected office You lose the
5 right to own, possess or exert any control over any type of
6 firearm or any other destructive device, and that includes all
7 ammunition by definition

8 THE DEFENDANT Yes

9 THE COURT You understand those rights are lost
10 forever unless at some point in the future, you become eligible
11 to ask for a reinstatement. And then only if you return to a
12 court of competent jurisdiction and that court takes an
13 affirmative step of restoring those rights are they restored.
14 They don't come back on their own

15 THE DEFENDANT Yes

16 THE COURT Sir, do you have any questions at all for
17 Mr Nance, Mr Lincoln, myself about anything that we've
18 reviewed, discussed, anything at all that deals with the entry
19 of this particular plea?

20 THE DEFENDANT No

21 THE COURT You feel you understand it all?

22 THE DEFENDANT Yes, sir

23 THE COURT Keeping that understanding in your mind,
24 tell me then for the record how you would like to plead to the
25 single count here of illegal transactions and attempted

1 transactions with credit card access devices in violation of
2 Title 18 How would you like to plead?

3 THE DEFENDANT I would like to plead guilty

4 THE COURT: Mr Nance, is there any legal reason you
5 can think of, counsel, why this Court could not accept that
6 plea?

7 MR NANCE No, Your Honor

8 THE COURT Counsel, I agree After the question and
9 answer session with Mr Onwuhara, I am more than satisfied that
10 he understands the charge against him, the elements of that
11 offense, the rights that he gives up by pleading guilty, the
12 extent of the agreement he's reaching with the United States
13 Government and most importantly, the potential consequences of
14 the entry of that plea

15 The Court has reviewed the plea agreement in detail and I'm
16 satisfied the offense charged is supported by an independent
17 basis in fact that contains each of the essential elements of
18 that offense And the Court is satisfied his plea of guilty is
19 made knowingly, intelligently and is a voluntary one The Court
20 is signing the report and recommendation recommending he be
21 adjudged guilty and have sentence imposed

22 Madam Clerk, do we have a sentencing date?

23 THE CLERK Yes, we do Sentencing is scheduled
24 before Chief Judge Coughenour on May 23rd, 2003, at 9 00 o'clock
25 a m

1 THE COURT All right, Mr. Onwuhara, as a result of the
2 hearing today, I'm ordering that presentence reports be prepared
3 for the benefit of the sentencing judge. Your counsel will do
4 one on your behalf, the government will do one from their
5 perspective U S Probation does an independent report

6 In order to do that, a probation officer will contact you
7 and set up a time to do an interview with you. Now, that
8 interview may certainly take place in the presence of your
9 counsel if you wish.

10 They'll then reduce it to writing, make it available to you
11 for review with Mr Nance If upon review, you believe anything
12 in there is incorrect or you object to anything there, let Mr
13 Nance know That gives him the ability to attempt to correct
14 whatever mistakes or errors you may point to or at the very
15 least, assuming the probation officer is not willing to change
16 what he or she has written, at the very least your counsel can
17 submit written objections to Judge Coughenour in time for his
18 review prior to the actual sentencing date Do you understand?

19 THE DEFENDANT Yes, I do

20 THE COURT Finally today, do you have any questions
21 for me before we recess or conclude this particular hearing?

22 THE DEFENDANT No, Your Honor

23 THE COURT Good luck at sentencing We will be at
24 recess

25 (At 4 14, court was in recess.)

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2
3
4 CERTIFICATE

5 I, Susan Palmerton, court reporter for the United States
6 District Court in the Western District of Washington at
7 Seattle, was present in court during the foregoing matter and
8 reported said proceedings stenographically

9 I futher certify that thereafter, I, Susan Palmerton, have
10 caused said stenographic notes to be transcribed via computer,
11 and that the foregoing pages are a true and accurate
12 transcription to the best of my ability

13
14 Dated this 27th day of February, 2003
15
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17
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19 Susan Palmerton
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